

1
2
3
4
5
6
7 RICHARD HAYES, et al.,
8 Plaintiffs,
9 v.
10 MAGNACHIP SEMICONDUCTOR
11 CORP., et al.,
12 Defendants.

Case No. 14-cv-01160-JST

**ORDER GRANTING MOTION TO
STRIKE**

Re: ECF No. 294

13 Before the Court is Defendant Avenue Capital Management II, L.P.’s (“Avenue Capital”)
14 motion to strike Plaintiffs’ second motion for class certification and for attorneys’ fees and
15 expenses. ECF No. 294 at 1. For the reasons below, the Court will grant the motion.

16 **I. BACKGROUND**

17 On April 13, 2016, the Court conducted a case management conference in this case. ECF
18 No. 223. At the conference, the Court set a schedule for the briefing and hearing of a class
19 certification motion, for discovery, and for trial. *Id.* Plaintiffs moved for class certification on
20 July 8, 2016, the deadline for that motion. In their motion, Plaintiffs sought a class period from
21 February 1, 2012 to February 12, 2015. ECF No. 231 at 2. On December 22, 2016, the Court
22 granted Plaintiffs’ motion for class certification, but limited the class period to February 1, 2012
23 through March 11, 2014. ECF No. 286.

24 Plaintiffs did not file a request for leave to file a motion for reconsideration pursuant to
25 Civil Local Rule 7-9. Instead, on January 5, 2017, Plaintiffs filed a second motion for class
26 certification for purchasers of MagnaChip stock between March 12, 2014 and February 12, 2015.
27 ECF No. 289. This was precisely the period of time the Court eliminated from the class period in
28 its December 22 order. On January 18, 2017, Avenue Capital moved to strike Plaintiffs’ second

1 class certification motion. ECF No. 294.

2 **II. ANALYSIS**

3 Under Federal Rule of Civil Procedure 12(f), a “court may issue any just orders . . . if a
4 party or its attorney . . . fails to obey a scheduling or other pretrial order.” Rule 12(f) gives the
5 Court broad powers to “protect[] the due and orderly administration of justice and [] maintain[] the
6 authority and dignity of the court.” Roadway Exp., Inc. v. Piper, 447 U.S. 752, 764 (1980). This
7 includes the power to control the Court’s docket by “striking pleadings in whole or in part.” Rule
8 37(b)(2)(A)(iii).

9 Here, Plaintiffs’ second motion for class certification does not comply with the Court’s
10 order, which set a deadline for the filing of a class certification motion and did not contemplate
11 successive class certification motions. The Court’s power to strike motions as untimely under
12 Rule 12(f) is well established in the law. E.g., SAGE Electrochromics Inc. v. View Inc., No. C-
13 12-06441 JST (DMR), 2014 WL 1998049, at *4 (N.D. Cal. May 15, 2014) (striking “invalidity
14 contentions” as untimely under the court’s scheduling order); see also ECF No. 294 at 7-8 (citing
cases).

15 Plaintiffs argue correctly that a second motion for class certification is not always
16 inappropriate. Federal Rule of Civil Procedure 23(c)(1)(C), for example, provides that “[a]n order
17 that grants or denies class certification may be altered or amended before final judgment.” But
18 Plaintiffs cite no authority supporting the theory that Rule 23(c)(1)(C) allows Plaintiffs to file a
19 second class certification motion just because they received an unfavorable ruling on their first
20 one. See Daniel F. v. Blue Shield of California, No. C 09-2037 PJH, 2015 WL 3866212, at *3
21 (N.D. Cal. June 22, 2015) (“Rule 23(c)(1)(C) does not reference motions to alter or amend class
22 certification orders, and it is not a separate mechanism by which a party can seek reconsideration
23 of a prior order relating to class certification.”). Rather, Rule 23(c)(1)(C) applies where
24 “subsequent developments” warrant revisiting a class certification decision. Friend v. Hertz Corp.,
25 No. C-07-5222 MMC, 2014 WL 4415988, at *2 (N.D. Cal. Sept. 8, 2014) (“In the absence of
26 subsequent developments warranting a revision, . . . the Court ordinarily has little reason to revisit
27 the issue of the propriety of its original [class certification] determination.”).

28 In this case, aside from the Court’s December 22 order granting class certification, there

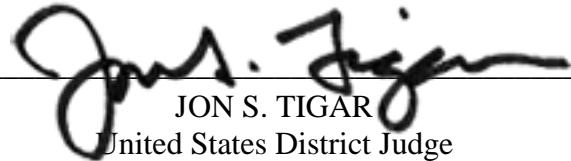
1 are no “subsequent developments” that justify Plaintiffs’ second motion for class certification. As
2 Plaintiffs admit in their opposition brief, their pending motion contains no new arguments and
3 relies on no new evidence. ECF No. 295 at 5 (“Plaintiffs’ motion to certify a second class is
4 brought in response to, and to address issues raised but not resolved in, the Court’s December 22,
5 2016 Order.”); id. at 4 (“Plaintiffs’ motion addresse[s] evidence already in the record, and d[oes]
6 not attach any additional expert reports or affidavits.”); id. at 7 (“Plaintiffs’ Motion to Certify a
7 Second Class raises no new evidence, and consequently requires no additional discovery.”).
8 Moreover, Plaintiffs have failed to identify a case where the court’s ruling on one motion qualifies
9 as a subsequent development justifying the filing of a second. The one case Plaintiffs cite on this
10 point, Santomenno v. Transamerica Life Ins. Co., 316 F.R.D. 295 (C.D. Cal. 2016), is
11 distinguishable. There, the district court considered the plaintiffs’ second class certification
12 motion only after the parties stipulated that such a brief could be filed. Id. at 301. Clearly, no
13 such stipulation exists here. In sum, Rule 23(c)(1)(C) cannot validate the filing of Plaintiffs’
14 second class certification motion.

CONCLUSION

15 The Court grants Avenue Capital’s motion to strike. Avenue Capital’s request for an
16 award of its attorneys’ fees incurred in filing this motion is denied.

17 IT IS SO ORDERED.

18 Dated: February 8, 2017



19
20 JON S. TIGAR
21 United States District Judge
22
23
24
25
26
27
28